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Pat Miller, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: *Complaint of XO Tennessee, Inc. Against BellSouth and Request for Expedited Ruling  
and for Interim Relief*  
Docket number: 04-00306

Dear Chairman Miller:

This letter is intended to supplement the request from XO Tennessee, Inc. ("XO") asking that the Authority consider XO's request for interim relief at the January 31, 2005, agenda conference. XO wishes to provide additional information to clarify that the FCC's "permanent" rules on unbundling, which were outlined in an FCC press release issued December 15, 2004, will not adversely impact XO's request for interim relief.

XO has requested that BellSouth Telecommunications, Inc. ("BellSouth") convert several of XO's leased lines from "special access" circuits to UNE loops. This conversion, as BellSouth has now acknowledged, involves simply a change in the billing rate.<sup>1</sup>

XO's complaint seeks an order directing BellSouth to perform billing conversions of both DS-1 loops (the equivalent of 24 voice-grade lines) and DS-3 loops (the equivalent of 28 DS-1 loops). The requirement to make such conversions as set forth in the FCC's Triennial Review Order was not appealed and is now the "law of the land." While not denying that the special access to UNE conversion must be done at cost-based rates, BellSouth refuses to perform these conversions until XO accepts a far-reaching amendment to its interconnection agreement that not only encompasses many other issues — issues that are in dispute as well as issues that are currently unsettled pending issuance of the permanent FCC rules — but also would not result in XO obtaining the conversions it has requested. The issue of BellSouth's obligations to perform these conversions, however, was not appealed and is a settled issue. The obligation is clear.<sup>2</sup>

<sup>1</sup> In the ILEC's "Motion to Govern Future Proceedings" filed January 4, 2005, with the U.S. Court of Appeals for the District of Columbia, the ILECs, including BellSouth, acknowledged that, following such a conversion, "CLECs will receive exactly the same service they always have, but will move from the tariffed special rate to the subsidized [sic] TELRIC rate" Motion at 16. A copy of this page from the Motion was attached to XO's letter to the TRA dated, January 6, 2005.

<sup>2</sup> When the TRA reaches the merits of XO's complaint, BellSouth's untenable position regarding a "required amendment" must be rejected for two reasons. First, no amendment to the interconnection agreement is required or necessary in this instance. The parties' current agreement contains a "switch as is" rate. This process and this rate are applicable to XO's request to convert special access circuits to UNE loops (the same process used for special access to EEL conversions), thus no interconnection amendment is needed. BellSouth has not required such amendments for EEL conversions. Second, XO has made it clear for more than one year that it is willing to execute an amendment related to the special access to UNE conversion process if BellSouth insists upon it. What XO is not willing to do is to execute the broad amendment BellSouth insists upon which deals with many issues outside the conversion question.

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Despite that, BellSouth refuses to process XO's conversion requests unless XO pays exorbitant and unreasonable conversion fees, forcing XO to file this complaint. Until the complaint is resolved, XO has asked for interim relief *ie.*, BellSouth should be ordered to make the conversions at an interim rate, subject to true-up, pending a final decision. A retroactive true-up will insure that BellSouth is protected from financial harm. Nevertheless, BellSouth argues that XO should not be granted any interim relief until the release of the FCC's written order on the new unbundling rules. As described below, the FCC's new rules alter somewhat the "impairment" standard applicable to both DS-1 and DS-3 loops but do not adversely impact XO's requested relief in this docket.

According to the FCC's announcement, the FCC has continued to order unbundling of DS-1 loops "except in any building within the service area of a wire center containing 60,000 or more business lines and 4 or more fiber-based collocators." Press Release, at 2. As described by FCC Commissioner Martin, this means that all DS-1 loops remain unbundled except in "less than one-half of one percent of the wire centers in the country." Transcript of FCC proceedings, at 13. (Copies of the Press Release and relevant pages of the transcript are attached to XO's letter of January 6, 2005.)

According to BellSouth, there are only three wire centers with at least 60,000 business lines in the entire BellSouth region.<sup>3</sup> None of those is located in Tennessee.<sup>4</sup> Therefore, the FCC's unbundling rules will not affect any DS-1 loops in Tennessee and do not have any impact on XO's request that BellSouth convert DS-1 special access circuits to DS-1 UNE loops in Tennessee.

The FCC rules on DS-3 loops require BellSouth to continue to unbundle DS-3 loops "except in any building within the service area of a wire center containing 38,000 or more business lines or 4 or more fiber-based collocators." Press Release, at 2. This exception applies only to DS-3 loops "in one percent of the wire centers across the country." Comments of Commissioner Martin, Transcript at 13. In the context of a full hearing on this matter, BellSouth should be required to provide information as to whether any of XO's conversion requests involves a DS-3 line which falls under this exception.

Therefore, for purposes of the interim relief requested by XO, this Authority should immediately order that BellSouth perform the conversion of all requested DS-1 circuits, both those conversions already ordered and those ordered in the future, and charge the same rate, subject to true-up, that BellSouth currently charges to convert a special access circuit to an EEL in Tennessee. That interim order should remain in affect pending a decision on the merits of XO's complaint.

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and forces XO to accept BellSouth's "self effectuating delisted UNE" language XO is also not willing to continue to wait for FCC rules on other issues in order to avail itself of an obligation BellSouth has had since 2003 to perform these conversions

<sup>3</sup> In the ILEC's "Motion" to the D C. Court of Appeals, at 14, the ILECs noted, "For example, Bellsouth — which has only three wire centers with at least 60,000 business lines . . ." A copy of this page from the Motion is attached to XO's letter of January 6, 2005

<sup>4</sup> BellSouth's most populated service areas are in Florida, Atlanta, and New Orleans.

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As for DS-3 loops, XO believes, based on current information, that none of the circuits which are the subject of XO's conversion requests in Tennessee involves a DS-3 loop. Therefore, unless BellSouth can demonstrate otherwise, the FCC's revised rules on unbundling DS-3 loops should have no impact on XO's request for relief in this docket.

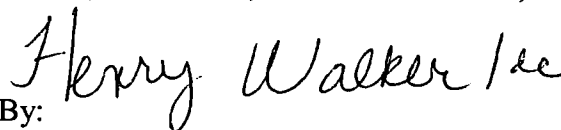
As XO has previously noted, XO has asked the TRA to set an interim rate, subject to true-up, of \$52.73 for the first conversion and \$24.62 for each additional conversion. This rate, which would apply to conversions of both DS-1 and DS-3 loops, is the current rate charged by BellSouth to convert an "as is" special access circuit to an unbundled EEL (unbundled loop plus unbundled transport) in Tennessee. In the alternative, the TRA should order BellSouth to file a cost-based rate for converting special access lines to UNE loops and the TRA could adopt that rate, subject to true-up, as the interim conversion rate in this proceeding. BellSouth recently filed such a rate in response to a discovery request in a Florida Commission proceeding. (The proposed Florida rate is proprietary and cannot be disclosed by XO in this case at this time, but the TRA should note that the cost-based rate to convert a switched access line to an EEL is only \$8.98 in Florida, substantially less than the conversion rate Tennessee.)

For these reasons, XO urges the TRA to grant immediately XO's request for interim relief with regard to DS-1 circuits since it is clear that those lines will NOT be affected by the FCC's permanent rules. Every day that BellSouth refuses to perform these conversions at cost-based rates results in the loss of thousands of dollars to XO and inhibits XO's ability to compete in Tennessee. There is no basis in law for allowing BellSouth to delay the conversion of these DS-1 circuits any longer.

Thank you for your consideration of this request.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC



By:

Henry Walker

HW/djc

cc: Guy Hicks